



Practitioner's Docket No. 313-010.001

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Francis J. Maguire

Application No.: 09 / 177,356 Group No.: 2611

Filed: October 23, 1998 Examiner: J. Salce

For: TELEPRESENCE SYSTEM AND ACTIVE/PASSIVE MODE DISPLAY FOR USE THEREIN

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**TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION—37 C.F.R. § 1.192)**

NOTE: The phrase "the date on which" an "appeal was taken" in 35 U.S.C. 154(b)(1)(A)(ii) (which provides an adjustment of patent term if there is a delay on the part of the Office to respond within 4 months after an "appeal was taken") means the date on which an appeal brief under § 1.192 (and not a notice of appeal) was filed. Compliance with § 1.192 requires that: 1. the appeal brief fee (§ 1.17(c)) be paid (§ 1.192(a)); and 2. the appeal brief complies with § 1.192(c)(1) through (c)(9). See Notice of September 18, 2000, 65 Fed. Reg. 56366, 56385-56387 (Comment 38).

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on July 26, 2004.

NOTE: "Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. . . ." 37 C.F.R. § 1.192(a) (emphasis added).

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Signature

Date: September 27, 2004

Deborah J. Clark

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** Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.*

2. STATUS OF APPLICANT

This application is on behalf of

- ☐ other than a small entity.
☒ a small entity.

A statement:

- ☐ is attached.
☐ was already filed.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 1.17(c), the fee for filing the Appeal Brief is:

- ☒ small entity \$165.00
☐ other than a small entity \$330.00

Appeal Brief fee due \$ 165.00

4. EXTENSION OF TERM

NOTE: 37 C.F.R. § 1.704(b) ". . . an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph."

NOTE: The time periods set forth in 37 C.F.R. § 1.192(a) are subject to the provision of § 1.136 for patent applications. 37 C.F.R. § 1.191(d). See also Notice of November 5, 1985 (1060 O.G. 27).

NOTE: As the two-month period set in § 1.192(a) for filing an appeal brief is not subject to the six-month maximum period specified in 35 U.S.C. § 133, the period for filing an appeal brief may be extended up to seven months. 62 Fed. Reg. 53,131, at 53,156; 1203 O.G. 63, at 84 (Oct. 10, 1997).

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

(complete (a) or (b), as applicable)

- (a) ☐ Applicant petitions for an extension of time under 37 C.F.R. § 1.136 (fees: 37 C.F.R. § 1.17(a)(1)-(5)) for the total number of months checked below:

Extension (months)	Fee for other than small entity	Fee for small entity
<input type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 420.00	\$ 210.00
<input type="checkbox"/> three months	\$ 950.00	\$ 475.00
<input type="checkbox"/> four months	\$ 1,480.00	\$ 740.00
<input type="checkbox"/> five months	\$ 2,010.00	\$ 1,005.00

Fee: \$ _____

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- ☐ An extension for _____ months has already been secured, and the fee paid therefor of \$ _____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ _____

or

- (b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$ \$165.00

Extension fee (if any) \$ _____

TOTAL FEE DUE \$ 165.00

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AND/OR

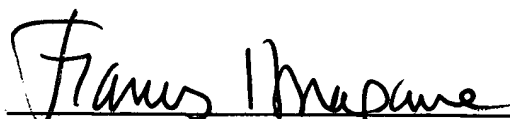
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Date: September 27, 2004

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(Transmittal of Appeal Brief [9-6.1]—page 4 of 4)



313-010-1
Serial No. 09/177,356

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Re application of: F. J. Maguire, Jr.

Serial No. 09/177,356

Examiner: J. Salce

Filed: October 23, 1998

Group Art Unit: 2611

For: TELEPRESENCE SYSTEM AND ACTIVE/PASSIVE MODE DISPLAY
FOR USE THEREIN

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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APPEAL BRIEF

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CERTIFICATE OF MAILING

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Deborah J. Clark
Dated: SEPT. 27, 2004

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Dear Sir:

The following is Appellant's Appeal Brief submitted in triplicate pursuant to the Notice of Appeal filed July 26, 2004.

I. Real Party in Interest

Francis J. Maguire, Jr.

II. Related Appeals and Interferences

None.

III. Status of Claims

Claims 1-5, 22-24, 26 and 28-32 are pending. All are rejected except for claims 30-31 which are objected to. The independent claims on appeal are six: (I) claim 1 (no dependent claims), (II) claim 2 (with dependent claims 3-4), (III) claim 5 (no dependent claims), (IV) claim 28 (with dependent claims 22, 23 and 26), (V) claim 29 (with dependent claims 24, 30, and 31), and (VI) claim 32 (with no dependent claims).

IV. Status of Amendments

An amendment after final accompanies this appeal brief. In the amendment

after the final action claims 6-14, 15-20 and 33 are canceled without prejudice.

V. Summary of the Invention

(I). Independent system claim 1 (with no dependent claims):

A first system user provides control motions to control the attitude (e.g., for three axes of control, the pitch, roll, and yaw) of a platform with a camera mounted thereon in order to control video images captured by the video camera. According to the specification, the first user can use a first display or some other input device to provide the attitude control signal. A preferred input device for use by the first user is a display such as shown in Fig. 3 as an HMD 56 with head attitude monitor 62. Another preferred input device is the display 164 shown in Fig. 6 that can be moved by the first user with handgrips in all three attitudinal axes. It then provides a sensed signal indicative thereof as an attitudinal control signal for controlling the attitude of the remote camera platform (e.g., reference numeral 100 in Fig. 3). It is mentioned in the specification, however, that a mouse (e.g., reference numeral 134 of Fig. 2) could be used but such would be limited to two axes of control (e.g., merely pitch and yaw without roll). Video images captured by the camera mounted on the remote platform will thus be captured from various attitudinal perspectives depending on the control motions of the first user.

Video images from the remote camera are sent as a video signal, along with the attitude control signal, to at least one second display for use by a corresponding at least one second user. Each of the second displays is responsive to the video signal for displaying the video images captured by

the camera mounted on the remote platform.

Not only that, but the attitude control signal is also used for controlling motions of each of the second displays emulative of the control motions of the first user.

The net result is the one or more second displays executing motions in concert with the control motions of the first user and showing the images captured by the remote camera while undergoing similar motions on the remote platform.

No other known prior art shows anything remotely like second displays executing attitudinal motions in concert with control motions of a first user and a camera platform moving according to the control motions to capture images from the different controlled attitudes.

(II) Independent system claim 2 (with dependent claims 3-4):

A system is claimed with at least one reality engine 148 such as shown in Fig. 5 for providing an image signal indicative of images taken from various attitudes; and a telepresence server 146 such as shown in Fig. 5, responsive to said image signal, for providing said image signal and an attitude control signal to at least one attitudinally actuatable display (152, 154, 156, ..., 158) via a telecommunications network 144 for attitudinally actuating said display for guiding a viewing attitude of a user and for displaying said images for said user of said at least one attitudinally actuatable display for passively viewing said images from said various attitudes.

(III) Independent display device claim 5 (no dependent claims):

A display device is claimed such as shown in Fig. 6. It has an n-axis display platform (180,185,198), responsive in a passive mode to an attitudinal control signal (see e.g. Fig. 3, reference numeral 112), for guiding a user's head to execute attitudinal movements, and responsive in an active mode to attitudinal movements of a user's head for providing sensed signals (see e.g. reference numeral 62 b of Fig. 4 which provides such signals) indicative of said attitudinal movements. It also has a display (see e.g., Fig. 6, reference numeral 164) connected to said n-axis display platform, responsive to a video signal, for displaying images corresponding to said attitudinal movements.

- (IV) Independent display device claim 28 (with dependent claims 22, 23 and 26) is similar to claim 5 but is only focused on the device details pertaining to the passive mode. A display device is claimed (see Fig. 6, reference numeral 163). It comprises a display (164) mounted on a first platform part (180) rotatable (168) about a first (z-) axis (170); a second platform part (185) within which said first platform part is rotatably mounted for rotation about a second (x-) axis (190); and at least one of a first motor (182) and first sensor (184) fixed in or to said first platform part (180) for rotationally driving and sensing rotations, respectively, of said first platform part about said first (z-) axis (170).
- (V) Independent display device claim 29 (with dependent claims 24, 30, and 31) is similar to claim 28 except more narrow by including the third platform part. It claims display device (163). It comprises a display (164) mounted on a first platform part (180) rotatable (168) about a first (z-) axis (170); a second platform part (185) within which said first platform part is rotatably mounted for rotation about a second (x-) axis (190); a third platform part (198) within which said second platform part is rotatably mounted for rotation about a third (y-) axis (200); and at least one of a first motor (182) and first sensor (184) fixed in or to said first platform part (180) for

rotationally driving and sensing rotations, respectively, of said first platform part about said first (z-) axis (170).

- (VI) Independent display device claim 32 (with no dependent claims) is also pictured e.g. in Fig. 6. A display device (163) is claimed. It comprises a display (164) mounted on a first platform part (180) rotatable (168) about a first (z-) axis (170), said display having hand grips (172, 174) for use by a user in placing hands thereon; and a second platform part (185) within which said first platform part is rotatably mounted for rotation about a second (x-) axis (190).

VI. Issues

1. Whether Claim 1 is obvious over Morita (US 6,611,285) in view of Petilen et al (US 5,436,542).
2. The question of whether claim 6 is indefinite has been mooted by the accompanying amendment after final canceling claim 6 and all its dependent claims 7-14. Applicant reserves the right to file a continuation later with these claims re-presented.
3. Whether Claims 2-4 and 15-19 are anticipated by Morita (US 6,611,285). The applicability of this rejection to claims 15-19 has been mooted without prejudice by the accompanying amendment as well.
4. Whether Claim 5 is anticipated by Gallery (US 5,900,849).
5. Whether Claims 22-24, 26 and 28-29 and 32-32 are anticipated by Pye (US 5,634,622). The applicability of this rejection to claim 33 has been mooted without prejudice by the accompanying amendment as well.

6. Whether Claim 32 is anticipated by Smith (U.S. 5,153,716). The applicability of this rejection to claim 33 has been mooted without prejudice by the accompanying amendment as well.

VII. Grouping of Claims

None of the remaining rejected claims stand or fall together and all rejected claims are separately argued.

VIII. Argument

1. Whether Claim 1 is obvious over Morita (US 6,611,285) in view of Petilen et al (US 5,436,542).

Regarding this rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Morita (U.S. 6,611,285) in view of Petelin et al (U.S. 5,436,542), in the nonfinal action of October 27, 2003, the Examiner stated that Morita discloses "one or more second displays, ... responsive to said n-axis attitude control signal for executing n-axis second display motions ..." pointing to column 11, lines 62-67 and column 12, lines 1-8. Applicant responded in the amendment filed January 30, 2004 that the passages cited by the Examiner and Fig. 13 do not show that the second displays execute n-axis second display motions. Although the second displays of Morita do show movement of the images themselves as displayed by the second displays, as well as showing buttons 307a, 308a in scroll bars 307, 306, this is quite different from the second displays "executing n-axis second display motions." The Examiner is evidently interpreting "second display motions" as meaning motions of the images on the second displays. But that is not what is claimed. The language in claim 1 says "second display motions". This means motions of the displays themselves. Morita's displays are stationary and it is only the video images that change their

direction not the displays.

In the final rejection the Examiner made it clear that applicant's understanding of the Examiner's position is correct by stating that "display motions" is being interpreted broadly and can be read onto the point-of-view of the video displayed on the second displays.

However, it is clear that the word "display" as used in claim 1 is directed to a display device on which video images can be represented and not the images themselves which are claimed using the phrase "video images". The claimed first display is for providing video images captured by the video camera. It does not say that the first display itself is video images. It says it is responsive to video signals for providing the video images. Likewise, the one or more second displays are claimed as being responsive to the video signals for providing the video images.

For the Examiner's interpretation to be correct, the claimed first display and the claimed one or more second displays would have to *themselves* be *video images*.

If that were the case, then what would be the meaning of the so-construed "*video images*" being responsive to the video signals for providing video images? How can *video images* be responsive to video signals for providing video images? Such a claim construction is not consistent with the plain meaning of the claimed first display and one or more second displays, i.e., devices.

The Patent Office is supposed to give the claim its broadest reasonable interpretation (MPEP 2111). This means the whole claim. The Examiner's broad interpretation is focused on the word "display" in isolation without regard to how that interpretation can be understood within the whole claim. The Examiner's interpretation is not a reasonable interpretation (as expressly required by MPEP 2111) because the interpretation renders the claim incomprehensible. On the

other hand, if the word “display” is interpreted to mean a display device, i.e., its plain meaning under MPEP 2111.01, then the claim makes sense. In other words, this not a case, as adverted to in MPEP 2111.01, of a word being used in the claim in a way that it could later (as an issued patent) be interpreted as not being limited in its meaning to that which is shown or disclosed in the specification.

It also needs to be pointed out that the Examiner’s interpretation is inconsistent with the specification. At page 1, line 11, a “personal computer” is used in the same context as a “display” (see also page 6, lines 7 and 27-28; page 7, line 7). A head mounted “display” is discussed at page 1, line 24. A desktop “display” is discussed at page 1, line 27. A head-coupled stereoscopic “display” is discussed at page 1, line 30. Plainly, these “displays” are all devices not images. There are many other examples in the specification and drawings of the use of the word display to mean a display device. See the displays 56, 58, 60 and 128 of Fig. 2, the displays 56, 116 of Figs. 3 & 4, the displays 150, 152, 154, 156, ..., 158 and 160, 162 of Fig. 5, the display 164 of Figs. 6 & 8 (page 18, line 8 and page 19, line 21).

The citation to Petelin et al. is noted but the Board is referred to Morita at column 1, lines 15-18.

Finally, it should be mentioned that the amendment to claim 1 filed January 30, 2004 was made not to address the rejection but to make it clear that the n-axis sensor could include a mouse rather than a first display that has its motions sensed. In other words, referring to Fig. 2, the first user could use the mouse 134 instead of the combined attitude sensor 62 and HMD 56 and the claim was thereby made broader in that respect (see page 15, lines 16-23).

Overturing of the 35 U.S.C. § 103 rejection of claim 1 is requested.

2. The indefiniteness rejection of claim 6 is mooted by the accompanying amendment.
3. Regarding the novelty rejection of claims 2-4 and 6-19 based on Morita (US 6,611,285), the applicability of this rejection to claims 6-19 has been mooted without prejudice by the accompanying amendment as well. Therefore, only claims 2-4 remain at issue. With regard to claim 2, again, there is no showing of attitudinally actuating a display or guiding a viewing attitude of a user. All of the display devices of Morita are stationary. Therefore, the novelty rejection of claim 2 is incorrect.

Regarding claim 3, the claimed telepresence server is for providing access to the reality engine for an active user of *a display* attitudinally actuatable by an active user for providing the attitude control signal to the reality engine and to the telepresence server. Morita does not show that the active user's display is *itself* attitudinally actuatable but rather the remote camera.

Regarding claim 4, Morita does not specifically disclose a director and claim 4 does not read on any director in Morita.

4. Regarding the novelty rejection of claim 5 as being anticipated by Gallery (U.S. 5,900,849), as far as applicant can tell, Gallery is not of record and withdrawal of the novelty rejection based on Gallery is requested. As far as Applicant can determine, Gallery was cited by the Examiner and not by Applicant. If the Examiner will prepare the appropriate form to make Gallery of record, that would be acceptable to the Applicant. Assuming Gallery will be made of record by the Examiner, Gallery does not show an n-axis display platform that is capable of moving attitudinally or that is capable of guiding a user's head to execute attitudinal movements. The alarm signal is simply, as the Examiner says, to help the user avoid a dangerous area and not to guide the user's head to

execute attitudinal movements.

Withdrawal of the 35 U.S.C. § 102(e) rejection of claim 5 is requested.

5. Regarding the novelty rejection of claims 22-24, 26, 28-29 and 32 (claim 33 has been canceled) based on Pye (U.S. 5,634,622), the Examiner is correct to say that Pye shows a sensor 130 in Fig. 2 but this sensor is not a sensor for sensing rotations. Rather, it is a sensor for sensing infrared radiation from the remote 140.

Regarding claim 29, the same may be said for that claim with regard to the sensor 130 of Pye. Moreover, there is no third platform part within which any second platform part is rotatably mounted in Pye. For that to be the case, the box-shaped base 12 of Pye would have to be rotatably mounted within another platform part. The same may be said for claim 22 as it relates to its independent claim 28 with the further limitation of a third platform part. Regarding the dependent claim 26, Pye nowhere shows or even suggests display viewports on the display for use by a user in placing eyes thereon.

Regarding dependent claim 24, there is no third axis in Pye. Regarding dependent claim 30, there is no sensor shown by Pye and there is no rotation of the box-shaped base 12. Regarding dependent claim 31, it depends from claim 30, just discussed above, and there is no third platform part, no rotations of the base 12, no sensor for sensing such rotations and no third access about which the second platform part rotates.

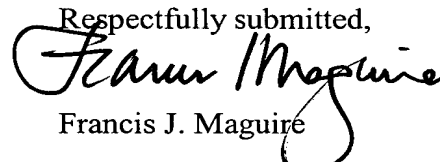
6. Regarding the novelty rejection of claim 32, the Examiner's interpretation of the Smith reference is incorrect, because although the display is rotatable about the pole shown in Fig. 14, thereby meeting the first element of claim 25, the ability of the user to move the display up and down the pole along the same axis does not meet the limitation of the second element of claim 25, because it is not "rotatably mounted for

rotation about” any other “second axis”, as claimed. It is rotatable about the pole only.

The claim requires a second platform part (such as the second platform part 185 of Fig. 6 of the present disclosure), within which a first platform part (such as the first platform part 180 of Fig. 6) is rotatably mounted for rotation about a second axis (such as the x-axis 190 of Fig. 6). Therefore, claim 25 is not anticipated by the reference.

Overturning of the 35 U.S.C. § 102 rejection of claims 22-24, 26 and 28-29 and 32 is requested.

The objections and rejections of the Official Action of October 27, 2003, having been shown to be inapplicable, overturning thereof is requested and passage of claims 1-5, 22-24, 26, and 28-32 to issue is requested.

Respectfully submitted,

Francis J. Maguire
Attorney for the Applicant
Registration No. 31,391

APPENDIX

1. System for providing video images, comprising:
 - a video camera for providing video signals indicative of said video images captured by said video camera;
 - a first display, responsive to said video signals, for providing said video images for viewing by a first user;
 - an n-axis sensor, responsive to n-axis control motions caused by said first user, for providing an n-axis attitude control signal for controlling said video images captured by said video camera;
 - an n-axis platform having said video camera mounted thereon, responsive to said n-axis attitude control signal, for executing n-axis platform motions emulative of said n-axis control motions; and
 - one or more second displays, responsive to said video signals, for providing said video images for viewing by one or more corresponding second users and responsive to said n-axis attitude control signal for executing n-axis second display motions emulative of said n-axis control motions.
2. System, comprising:
 - at least one reality engine for providing an image signal indicative of images taken from various attitudes; and
 - a telepresence server, responsive to said image signal, for providing said image signal and an attitude control signal to at least one attitudinally actuatable display via a telecommunications network for attitudinally actuating said display for guiding a viewing attitude of a user and for displaying said images for said user of said at least one attitudinally actuatable display for passively viewing said images from said various attitudes.
3. System of claim 2, wherein said telepresence server is for providing access to said reality engine for an active user of a display attitudinally actuatable by

said active user for providing said attitude control signal to said reality engine and to said telepresence server.

4. System of claim 2, wherein said telepresence server is for providing access to said reality engine for a director.

5. Display device, comprising:
n-axis display platform, responsive in a passive mode to an attitudinal control signal, for guiding a user's head to execute attitudinal movements, and responsive in an active mode to attitudinal movements of a user's head for providing sensed signals indicative of said attitudinal movements; and
a display connected to said n-axis display platform, responsive to a video signal, for displaying images corresponding to said attitudinal movements.

Claims 6-21 (Canceled)

22. The device of claim 28, further comprising:
a third platform part (198) within which said second platform part is rotatably mounted for rotation about a third (y-) axis (200).

23. The device of claim 28, wherein said first and second axes are perpendicular.

24. The device of claim 29, wherein said first, second, and third axes are mutually perpendicular.

25. (Canceled)

26. The device of claim 28, further comprising display viewports (176, 178) on said display for use by a user in placing eyes thereon.

27. (Canceled)

28. A display device (163), comprising:
a display (164) mounted on a first platform part (180) rotatable (168) about a first (z-) axis (170);
a second platform part (185) within which said first platform part is rotatably mounted for rotation about a second (x-) axis (190); and
at least one of a first motor (182) and first sensor (184) fixed in or to said first platform part (180) for rotationally driving and sensing rotations, respectively, of said first platform part about said first (z-) axis (170).

29. A display device (163), comprising:
a display (164) mounted on a first platform part (180) rotatable (168) about a first (z-) axis (170);
a second platform part (185) within which said first platform part is rotatably mounted for rotation about a second (x-) axis (190);
a third platform part (198) within which said second platform part is rotatably mounted for rotation about a third (y-) axis (200); and
at least one of a first motor (182) and first sensor (184) fixed in or to said first platform part (180) for rotationally driving and sensing rotations, respectively, of said first platform part about said first (z-) axis (170).

30. The device of claim 29, further comprising at least one of a second motor (192) and second sensor (194) fixed in or to said second platform part (185) for rotationally driving and sensing rotations, respectively, of said second platform part about said second axis.

31. The device of claim 30, further comprising at least one of a third motor (202) and third sensor (204) fixed in or to said third platform part (198) for

rotationally driving and sensing rotations, respectively, of said second platform part (180) about said third (y-) axis (200).

32. A display device (163), comprising:

a display (164) mounted on a first platform part (180) rotatable (168) about a first (z-) axis (170), said display having hand grips (172, 174) for use by a user in placing hands thereon; and

a second platform part (185) within which said first platform part is rotatably mounted for rotation about a second (x-) axis (190).

33. (Canceled)